

House Bill 2133: Disgorgement Will Disrupt the Stability of the Texas Electricity Market

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Analysis

HB 2133 gives the PUC the ability to “order disgorgement of all excess revenue resulting from [a] violation ... of the statutes, rules, or protocols relating to wholesale electric markets.” This is in addition to any penalties the PUC might impose.

What this means is that the PUC could order a generator to return any revenue from the sale of electricity into the wholesale market that the PUC determines was earned because of a violation, such as market power abuse. While this sounds reasonable on the surface, there are significant problems with this.

In fact, the authority to order disgorgement would be a significant expansion of the PUC’s ability to regulate the electricity market, and is a major reversal of almost two decades of public policy of the state of Texas. Since at least 1995, the Texas Legislature has moved the Texas electricity market towards less—not more—regulation.

The results have been nothing less than spectacular. Texas has the most competitive electricity market in the U.S., if not the world. This has brought tremendous economic benefit to the state through billions of dollars of investment and lower electricity prices, helping make Texas the best state in the country for living in and creating jobs.

The major shift in policy contained in HB 2133 would put these advances and benefits at risk, and should be undertaken only upon evidence that there is a significant problem in the electricity market that needs to be addressed. However, that is not the case. There is no evidence of market power abuse or other significant violations in the Texas electricity market that would justify this level of re-regulation. Additionally, each year the market is becoming more competitive, with far less opportunity for such activity to take place.

As the ERCOT market monitor has repeatedly found, the ERCOT wholesale market has “performed competitively,” with “competitive performance measures showing a trend of increasing competitiveness.” As recently as last month, the market monitor confirmed this when it found “there was no evidence of market manipulation or market power abuse in relation to the widespread power plant outages that occurred

the first week of February.” With the introduction of the new nodal system this year, the competitiveness of the system continues to improve.

Another problem with disgorgement is that there are already remedies in place to deal with any violations that might occur. The PUC can impose large penalties on violators, and any company that believes it has been defrauded in a market transaction can seek redress and refunds in the courts. It is important to remember that any transactions regulated under HB 2133 would be between corporations who have the resources to litigate such issues if they arise.

Since the move toward deregulation began back in 1995, there have been numerous attempts to re-impose regulations on the market. HB 2133 follows down that path, and would harm Texas consumers and the Texas economy by disrupting the market and creating regulatory uncertainty. The result will be higher—not lower—electricity prices for Texas consumers. There is simply no need for the added regulation on the market imposed by this bill.

Evidence of the Competitiveness of the Texas Wholesale Electricity Market*

Competition in Texas’ Wholesale Electricity Market (ERCOT Market Monitor Reports)

- **No Evidence of Problems during 2011 Freeze:** “[T]here was no evidence of market manipulation or market power abuse in relation to the widespread power plant outages that occurred the first week of February.”
- **Market Competitive and Improving in 2009:** “The ERCOT wholesale market performed competitively in 2009, with the competitive performance measures showing a trend of increasing competitiveness over the period 2005 through 2009.”
- **Market Competitive and Improving in 2008:** “The competitiveness of supplier offers improved considerably in 2006 compared to 2005, followed by even more substantial improvement in 2007 and 2008. ... The frequency

with which at least one supplier was pivotal in the balancing energy auction ... has fallen consistently from 29 percent of the hours in 2005, to 21 percent of the hours in 2006, and to less than 11 percent of the hours in 2007 and 2008.”

- **Market Competitive and Improving in 2007:** “We find improvements in a number of areas over the results in prior years that can be attributed to changes in the market rules or operation of the markets. Our analysis also indicates that the market performed competitively in 2007.”

Wholesale Electricity Prices in Texas (2009 Market Monitor Report)

- **Wholesale Prices the Lowest Since 2002:** “The average wholesale electricity price was \$34.03 per MWh in 2009, which is 56 percent lower than the 2008 average price of \$77.19 per MWh. This is the lowest annual average price experienced in the ERCOT wholesale market since 2002.”
- **Wholesale Prices Lower than in Many Other Markets:** “All-in wholesale electricity prices for the ERCOT market in 2009 were lower than in the organized wholesale electricity markets in California, New England, the New York ISO, and the PJM Interconnection.”
- **Wholesale Prices Too Low During Peak Demand:** “However, pricing outcomes in 2009 continued to inadequately reflect market conditions during times of operating reserve scarcity.”

Government-created Inefficiencies in Texas’ Electricity Market (Market Monitor Report)

- “Interzonal price disparities were larger in 2008 and 2009 than in prior years, primarily as a result of increased wind capacity in the West Zone and inefficiencies that are inherent to the zonal market design.” (2009)
- “The report generally confirms prior findings that the current market rules and procedures are resulting in systemic inefficiencies.” (2009)
- “Under the current zonal market design, transmission congestion is most frequently resolved through non-transparent, non-market-based procedures.” (2008)

Significant Improvements Underway in 2011 (2009 Market Monitor Report)

- “The nodal market design will fundamentally improve ERCOT’s ability to efficiently manage transmission congestion, which is one of the most important functions in electricity markets.”
- “The wholesale market should function more efficiently under the nodal market design by providing better incentives to market participants, facilitating more efficient commitment and dispatch of generation, and improving ERCOT’s operational control of the system.”
- “The nodal market will produce price signals that better indicate where new generation is most needed (and where it is not) for managing congestion and maintaining reliability.” ☆

* The Independent Market Monitor reports cited in this paper may be found at: <http://www.potomaceconomics.com/index.php/documents/C6&C10>.

